

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

WESLIE MARTIN,

Plaintiff,

v.

ESQUIVEL, et al.,

Defendants.

Case No. 3:23-cv-00236-ART-CLB

ORDER

In June 2023, Plaintiff Weslie Martin (“Plaintiff”), then an inmate in the custody of the Nevada Department of Corrections (“NDOC”), initiated this lawsuit by submitting a civil rights complaint under 42 U.S.C. § 1983 and filing an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.) The Court screened Plaintiff’s complaint, allowing both his First Amendment retaliation claim and his Eighth Amendment conditions of confinement claim to proceed against Defendants Esquivel, Arziga, Sharp, Rubio, and Stubbs. (ECF No. 7 at 9.) The Court then stayed the case and referred it to the Inmate Early Mediation Program. (*Id.* at 11–10.)

During the stay, the NDOC filed a suggestion of death on the docket, informing the Court that Plaintiff passed away on September 11, 2023. (ECF No. 12.) The Court ordered that any motion for substitution be filed within 90 days and warned that the failure to do so could result in dismissal of this case. (ECF No. 15.) Following the 90-day period, on January 18, 2024, the Court had not received a motion to substitute, so it dismissed this action and closed it. (ECF No. 17.)

On October 18, 2024, Denzel Hosea Martin (“Denzel”), through counsel, filed a Motion to Set Aside Judgment Pursuant to Rule 60(b) and a Motion for

1 Substitution Pursuant to Rule 25(a)(1).<sup>1</sup> (ECF Nos. 24, 25.) Denzel states that he  
 2 is Plaintiff's brother and the special administrator of Plaintiff's estate. (ECF No.  
 3 24 at 2.) He learned about Plaintiff's death on February 15, 2024, when the Ninth  
 4 Circuit served him a notice of death from another of Plaintiff's cases before this  
 5 Court. (*Id.* at 3.) After learning about Plaintiff's death, it took Denzel two months  
 6 to secure counsel. (*Id.*) A few months later, Denzel filed the petition in state court  
 7 requesting that he be named the special administrator of Plaintiff's estate. (*Id.*)  
 8 On August 1, 2024, the state court granted the petition and named Denzel as the  
 9 special administrator of his brother's estate. (*Id.*) Once the appointment was  
 10 finalized, Denzel started to make substitution motions in the active cases Plaintiff  
 11 had before he died. (*Id.*)

12 In his motions, Denzel requests that the Court: (1) reopen the case, (2)  
 13 amend the caption of the case to name him as the plaintiff, and (3) allow him to  
 14 pursue the claim(s) pending in this matter. (*Id.* at 2, 6.)

## 15 **I. DISCUSSION**

16 Denzel is asking this Court to set aside its judgment dismissing this action  
 17 without prejudice under Federal Rule of Civil Procedure 60(b)(1). This rule  
 18 provides that a court may relieve a party or its legal representative from a final  
 19 judgment, order, or proceeding for "mistake, inadvertence, surprise, or excusable  
 20 neglect." Fed. R. Civ. P. 60(b)(1).

21 In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380  
 22 (1993), the Supreme Court interpreted "neglect" to encompass "both simple,  
 23 faultless omissions to act and, more commonly, omissions caused by  
 24 carelessness." *Id.* at 388. In assessing whether a set-side is justified by a party's  
 25 excusable neglect, courts apply a four-part test: (1) the danger of prejudice to the

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26 <sup>1</sup> Other than Letters of Special Administration attached as an exhibit to the  
 27 motion for substitution (ECF No. 25-1), these motions are identical. (ECF Nos.  
 28 24, 25.) Therefore, the Court will cite to the first motion in this order when  
 referencing them.

1 opposing party; (2) the length of the delay and its potential impact on judicial  
2 proceedings; (3) the reason for the delay, including whether it was within the  
3 reasonable control of the movant; and (4) whether the movant acted in good faith.  
4 *Id.* at 395.

### 5 **1. Prejudice to the Opposing Party**

6 To be prejudicial, the “standard is whether [Defendants’] ability to pursue  
7 [their defenses] will be hindered.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).  
8 The delay must result in tangible harm such as loss of evidence, increased  
9 difficulties of discovery, or greater opportunity for fraud or collusion. *See TCI Grp.*  
10 *Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), overruled on other  
11 grounds by *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001). The loss of a  
12 quick victory does not constitute prejudice. *Bateman v. U.S. Postal Serv.*, 231 F.3d  
13 1220, 1225 (9th Cir. 2000).

14 The Court finds that this factor weighs in favor of setting aside its prior  
15 judgment. The case was in the preservice screening stage and was going to the  
16 Inmate Early Mediation Conference. Therefore, the danger of prejudice to the  
17 opposing party is low because the opposing party had not yet been served.

### 18 **2. Length of Delay**

19 Next, the Court considers whether Denzel’s neglect caused significant delay  
20 and its impact on the proceedings. *Pioneer*, 507 U.S. at 395. The Court finds that  
21 this factor weighs against setting aside the judgment. The Court closed the case  
22 in January 2024. Denzel filed his motions ten months later.

### 23 **3. Reason of the Delay**

24 Next, the Court considers whether Denzel’s neglect caused significant delay  
25 and its impact on the proceedings. *Pioneer*, 507 U.S. at 395. When assessing the  
26 reason for the delay, the Supreme Court interprets Congress’s intent as  
27 permitting courts “to accept late filings caused by inadvertence, mistake, or  
28 carelessness, as well as by intervening circumstances beyond the party’s control.”

1 *Id.* at 388. Delays in filing resulting from “negligence and carelessness,” not  
2 “deviousness or willfulness,” may be considered excusable neglect. *Bateman*, 231  
3 F.3d at 1225.

4 While there was a ten-month gap between the closing of this case and  
5 Denzel’s motions, he states that he acted with the utmost speed under the  
6 circumstances. He was unaware of the dismissal of this action and did not receive  
7 notice of Plaintiff’s death until February 15, 2024. (ECF No. 24 at 2, 6.) It took  
8 him two more months to find counsel. (*Id.* at 3.) And it was not until August 1,  
9 2024, that the state court named him as the special administrator of Plaintiff’s  
10 estate. (*Id.*) Therefore, even though there was a significant gap in time between  
11 the closing of this case and the present motions, the delay is understandable,  
12 and Denzel shows that he acted as quickly as possible under the circumstances.  
13 This factor weighs in favor of setting aside the prior judgment.

#### 14 **4. Bad Faith**

15 For the last factor, the Court examines whether Denzel acted in bad faith  
16 when he failed to respond to the Court’s orders and meet its deadlines. There is  
17 no evidence that Denzel purposely acted in bad faith. On the contrary, he was  
18 unaware of the deadlines and appears to have acted as quickly as possible to  
19 reopen this case.

20 After considering all the *Pioneer* factors, the Court finds that they weigh in  
21 favor of reopening this case. The danger of prejudice to the opposing party is low,  
22 Denzel provided good reasons for his failure to follow the Court’s order to file a  
23 motion to substitute, and, based on his explanation, he acted in good faith.  
24 Accordingly, the Court **GRANTS** his motions (ECF Nos. 24, 25) and reopens this  
25 case.

#### 26 **II. CONCLUSION**

27 For the foregoing reasons, it is ordered that Denzel’s Motion to Set Aside  
28 Order Pursuant to Rule 60(b) (ECF No. 24) and Motion for Substitution Pursuant

1 to Rule 25(a)(1) (ECF No. 25) are **GRANTED**.

2 It is further ordered that the Clerk of the Court reopen this case and  
3 substitute “Denzel Hosea Martin, Special Administrator of the Estate of Weslie  
4 Hosea Martin” as the plaintiff in this matter.

5 It is further ordered that Denzel shall be allowed to pursue the claim(s)  
6 pending in this matter. This case will proceed onto the normal litigation track.

7 It is further ordered that the Clerk of the Court shall electronically **SERVE**  
8 a copy of this order and a copy of the Complaint (ECF No. 8) on the Office of the  
9 Attorney General of the State of Nevada by adding the Attorney General of the  
10 State of Nevada to the docket sheet. This does not indicate acceptance of service.

11 It is further ordered that service must be perfected within ninety (90) days  
12 from the date of this order pursuant to Fed. R. Civ. P. 4(m).

13 It is further ordered that, subject to the findings of the screening order (ECF  
14 No. 7), within twenty-one (21) days of the date of entry of this order, the Attorney  
15 General’s Office shall file a notice advising the Court and Denzel of: (a) the names  
16 of the Defendant(s) for whom it accepts service; (b) the names of the Defendant(s)  
17 for whom it does not accept service, and (c) the names of the Defendant(s) for  
18 whom it is filing the last-known-address information under seal. As to any of the  
19 named Defendant(s) for whom the Attorney General’s Office cannot accept  
20 service, the Office shall file, under seal, but shall not serve Denzel the last known  
21 address(es) of those Defendant(s) for whom it has such information. If the last  
22 known address of the Defendant(s) is a post office box, the Attorney General’s  
23 Office shall attempt to obtain and provide the last known physical address(es).

24 If service cannot be accepted for any of the named Defendant(s), Denzel  
25 shall file a motion identifying the unserved Defendant(s), requesting issuance of  
26 a summons, and specifying a full name and address for the Defendant(s). For  
27 the Defendant(s) as to which the Attorney General has not provided last-known-  
28 address information, Denzel shall provide the full name and address for the

1 Defendant(s).

2 It is further ordered that, if the Attorney General accepts service of process  
3 for any named Defendant(s), such Defendant(s) shall file and serve an answer or  
4 other response to the Complaint (ECF No. 7) within sixty (60) days from the date  
5 of this order.

6 It is further ordered that Denzel shall serve upon Defendant(s) or, if an  
7 appearance has been entered by counsel, upon their attorney(s), a copy of every  
8 pleading, motion or other document submitted for consideration by the Court. If  
9 Denzel electronically files a document with the Court's electronic-filing system,  
10 no certificate of service is required. Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-  
11 1(b); Nev. Loc. R. 5-1. However, if Denzel mails the document to the Court, Denzel  
12 shall include with the original document submitted for filing a certificate stating  
13 the date that a true and correct copy of the document was mailed to the  
14 Defendant(s) or counsel for the Defendant(s). If counsel has entered a notice of  
15 appearance, Denzel shall direct service to the individual attorney named in the  
16 notice of appearance, at the physical or electronic address stated therein. The  
17 Court may disregard any document received by a district judge or magistrate  
18 judge which has not been filed with the Clerk, and any document received by a  
19 district judge, magistrate judge, or the Clerk which fails to include a certificate  
20 showing proper service when required.

21  
22 DATED THIS 4th day of November, 2024.

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25 ANNE R. TRAUM  
26 UNITED STATES DISTRICT JUDGE  
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